

2005 DRAFTING REQUEST

Bill

Received: **09/07/2005**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Justice 4-9463**

By/Representing: **Mark Rinehart**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **RinehartMW@DOJ.STATE.WI.US**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Allow environmental standards to be stricter than federal standards

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	btradewe 10/04/2005	lkunkel 11/01/2005	jfrantze 11/01/2005	_____	mbarman 11/01/2005		State
/1	btradewe 11/30/2005	lkunkel 12/13/2005	chaugen 12/15/2005	_____	sbasford 12/15/2005		State
/2	btradewe 02/22/2006	lkunkel 03/08/2006	jfrantze 03/08/2006	_____	sbasford 03/08/2006	sbasford 04/18/2006	

FE Sent For:

A+
intro

<END>

2005 DRAFTING REQUEST

Bill

Received: **09/07/2005**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Justice 4-9463**

By/Representing: **Mark Rinehart**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **RinehartMW@DOJ.STATE.WI.US**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Allow environmental standards to be stricter than federal standards

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	btradewe 10/04/2005	lkunkel 11/01/2005	jfrantze 11/01/2005	_____	mbarman 11/01/2005		State
/1	btradewe 11/30/2005	lkunkel 12/13/2005	chaugen 12/15/2005	_____	sbasford 12/15/2005		State
/2	btradewe 02/22/2006	lkunkel 03/08/2006	jfrantze 03/08/2006	_____	sbasford 03/08/2006		

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **09/07/2005**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Justice 4-9463**

By/Representing: **Mark Rinehart**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **RinehartMW@DOJ.STATE.WI.US**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Allow environmental standards to be stricter than federal standards ✓

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	btradewe 10/04/2005	lkunkel 11/01/2005	jfrantze 11/01/2005	_____	mbarman 11/01/2005		State
/1	btradewe 11/30/2005	lkunkel 12/13/2005	chaugen 12/15/2005	_____	sbasford 12/15/2005		

FE Sent For:

1/2 lmk 3/8
3/8
Silf
3/8
~~END~~

2005 DRAFTING REQUEST

Bill

Received: 09/07/2005

Received By: btradewe

Wanted: As time permits

Identical to LRB:

For: Justice 4-9463

By/Representing: Mark Rinehart

This file may be shown to any legislator: NO

Drafter: btradewe

May Contact:

Addl. Drafters:

Subject: Environment - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: RinehartMW@DOJ.STATE.WI.US

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Allow environmental standards to be stricter than federal standards ✓

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	btradewe 10/04/2005	lkunkel 11/01/2005	jfrantze 11/01/2005		mbarman 11/01/2005		

FE Sent For:

<END>

2005 DRAFTING REQUEST

Bill

Received: **09/07/2005**

Received By: **btradewe**

Wanted: **As time permits**

Identical to LRB:

For: **Justice 4-9463**

By/Representing: **Mark Rinehart**

This file may be shown to any legislator: **NO**

Drafter: **btradewe**

May Contact:

Addl. Drafters:

Subject: **Environment - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **RinehartMW@DOJ.STATE.WI.US**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Allow environmental standards to be stricter than federal standards ✓

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe	<i>lmk 11/1</i> /1	<i>[Signature]</i>	<i>Self</i> /1			

FE Sent For:

<END>

Tradewell, Becky

From: Gibson-Glass, Mary
Sent: Wednesday, September 07, 2005 10:39 AM
To: Tradewell, Becky
Cc: Kite, Robin
Subject: FW: drafting request
Attachments: Bill request form dft1.doc; Fed-State List Appendix A.doc

This is yours Becky.

Mary

From: LRB.Legal
Sent: Wednesday, September 07, 2005 7:38 AM
To: Kite, Robin; Gibson-Glass, Mary
Subject: FW: drafting request

Sarah Basford
Program Assistant
State of Wisconsin
Legislative Reference Bureau
PH: (608) 266-3561/FAX: (608) 264-6948
sarah.basford@legis.state.wi.us

From: Rinehart, Mark W.
Sent: Tuesday, September 06, 2005 4:42 PM
To: LRB.Legal
Subject: drafting request

Please find attached a drafting request by the Department of Justice.

Thank you.

Mark Rinehart
Legislative Liaison
Department of Justice

09/07/2005

Bill Request Form

Legislative Reference Bureau

100 N. Hamilton Street
Legal Section 266-3561

You may use this form or talk directly with the LRB attorney who will draft the bill.

Date 9/6/05

Legislator, agency, or other person requesting this draft Wisconsin Department of Justice

Person submitting request (name and phone number) Mark Rinehart

Persons to contact for questions about this draft (names and phone numbers) Mark Rinehart (264-9463); Tom Dawson (266-8987)

Describe the problem, including any helpful examples. How do you want to solve the problem?

Problem:

Many Wisconsin statutory provisions for the State's administration of federal environmental regulatory laws either prohibit, restrict, or place heavy burdens on the Wisconsin Department of Natural Resources (DNR) with respect to adopting environmental requirements that are stricter than existing or future federal requirements. Examples are cited in Appendix A (attached). In addition, DNR has adopted administrative rules that prevent it from adopting mercury emission requirements more strict than recently relaxed federal requirements, even if a case could be made under Wis. Stat. § 285.27(1)(a), (4) that "that the relaxed standards would not provide adequate protection for public health and welfare." See Wis. Admin. Code § NR 446.029. Unless preempted from doing so by federal law, States have the sovereign authority to adopt statutory standards stricter than federal standards as long as they do not conflict with (make impossible) administration of federal minimum standards. Of course, adoption of State regulations are subject to well-established state and federal constitutional limitations and standards (e.g., rational basis test, takings).

Solution:

Revise Wisconsin's environmental laws to remove restrictions on DNR and all state agencies that administer federal environmental protection laws so as to authorize them to adopt stricter standards than required under federal law.

Please attach a copy of any correspondence or other material that may help us. If you know of any statute sections that might be affected, list them or provide a marked-up copy. See Appendix A (attached).

You may attach a marked-up copy of any LRB draft or provide its number (e.g., 2001 LRB-234511 or 1999 AB-67).

Requests are confidential unless stated otherwise. May we tell others that we are working on this for you? NO

If yes:	Anyone who asks?	YES	NO
	Any legislator?	YES	NO

**Only the following
persons**_____

Do you consider this request urgent? NO If yes, please indicate why _____

Should we give this request priority over any pending request of this legislator, agency, or person?

YES

APPENDIX A

State Clean Water Act and Clean Air Act Provisions In Which DNR May **Not** Adopt Stricter Standards

August, 2005

Clean Water Act Delegated Program

283.11 State and federal standards.

(2) Compliance with federal standards.

(a) Except for rules concerning storm water discharges for which permits are issued under s. 283.33, **all rules** promulgated by the department under this chapter as they relate to point source discharges, effluent limitations, municipal monitoring requirements, standards of performance for new sources, toxic effluent standards or prohibitions and pretreatment standards **shall comply with and not exceed the requirements of the federal water pollution control act, 33 USC 1251 to 1387, and regulations adopted under that act.**

(b) Rules concerning storm water discharges may be no more stringent than the requirements under the federal water pollution control act, 33 USC 1251 to 1387, and regulations adopted under that act.

(3) Standards for nitrogen, phosphorous and disinfection in the absence of federal standards.

(a) Standards for nitrogen and disinfection. Notwithstanding sub. (1) or (2), the department may promulgate by rule effluent limitations representing the best available demonstrated control technology, processes, operating methods or other alternatives concerning the discharge of nitrogen compounds and concerning the disinfection of sanitary wastewaters if the U.S. environmental protection agency has not promulgated an effluent limitation, effluent standard or prohibition concerning this type of discharge or disinfection.

(am) Standards for phosphorous. Notwithstanding sub. (1) or (2), the department shall promulgate by rule effluent limitations representing the best available demonstrated control technology, processes, operating methods or other alternatives concerning the discharge of phosphorous if the U.S. environmental protection agency has not promulgated an effluent limitation, effluent standard or prohibition concerning this type of discharge.

(d) **Impact of subsequent federal standards.** If the U.S. environmental protection agency promulgates an effluent limitation, effluent standard or prohibition concerning a type of discharge or disinfection specified under par. (a) or (am) for a category or class of point sources which is applicable to a permit holder, **the department may modify, and at the request of the permit holder shall modify, the effluent limitation specified in the permit to conform with the effluent limitation, effluent standard or prohibition promulgated by the U.S. environmental protection agency.**

(4) Standards for **toxic pollutants in the absence of federal standards.**

(a) Authorization. Notwithstanding sub. (1) or (2), the department may promulgate by rule, under s. 283.21, a toxic effluent standard or prohibition applicable to a category or class of point sources for the discharge of an identified toxic pollutant, if the U.S. environmental protection agency has not done either of the following for that identified toxic pollutant:

1. Promulgated, under 33 U.S.C. § 1311 (b) (2), an effluent limitation applicable to the specified category or class of point sources.
2. Promulgated, under 33 USC 1317, an effluent standard or prohibition applicable to the specified category or class of point sources.

(c) Concurrent rule making. A toxic effluent standard or a prohibition for a substance identified under par. (b) 3. may not be promulgated before the list of toxic pollutants has been revised under s. 283.21 (1) (a) to include that substance. The revision under s. 283.21 (1) (a) and the toxic effluent standard or prohibition under s. 283.21 (1) (b) may be promulgated concurrently.

(d) Additional procedures. As part of the rule-making process for a rule to which this subsection applies, the department shall do all of the following:

1. Specify in the proposed rule whether it applies to all waters of the state or to designated portions of the waters of the state.
2. Consider whether there are available removal technologies which provide the capability of achieving compliance at or for representative point sources likely to be affected by the rule and whether there are alternative control strategies which provide the capability of achieving compliance.
3. If the department finds that the level of pollutant control resulting from the application of available removal technologies or alternative control strategies is inadequate to protect public health, safety or welfare or the environment, consider any evidence presented on the relationship of the economic and social costs of the proposed standard or prohibition, including any social or economic dislocation in representative communities likely to be affected by the rule, to the social and economic benefits likely to be obtained, including attainment of the objectives of this chapter.

(e) Impact of subsequent federal standards.

1. If the U.S. environmental protection agency, under 33 USC 1317, promulgates a **toxic effluent standard or prohibition for a toxic pollutant** after the department promulgates a toxic effluent standard or prohibition, the department may modify its standard or prohibition to conform to the federal standard or prohibition. **At the request of a permittee to which the standard or prohibition promulgated by the department applies under the terms of a permit, the department shall modify the permit to conform to the federal standard or prohibition.**

2. If the U.S. environmental protection agency, under 33 USC 1311 (b) (2), promulgates **an effluent limitation applicable to the discharge of a toxic pollutant** from a point source after the department promulgates a toxic effluent standard or prohibition, the department may modify its standard or prohibition to conform to the federal toxic effluent limitation. **A permittee to which the standard or prohibition promulgated by the department applies under the terms of a permit may request that the department modify the permit to conform to the federal effluent limitation.** The department shall use the procedures specified under s. 283.53 (2) (b) to (f) to determine whether to grant the request. **The department shall grant the request unless it finds that the resulting limitation, as applied to the permittee and to any other permittees subject to the department's standard or prohibition which discharge into the receiving water, would be inadequate to protect the public health, safety or welfare or the environment in the receiving water or any other waters** directly affected by the discharge. A decision by the department not to grant the request is reviewable under s. 283.63.

Clean Air Act Delegated Program

285.11 Air pollution control; department duties.

The department shall:

(6) Prepare and develop one or more comprehensive plans for the prevention, abatement and control of air pollution in this state. The department thereafter shall be responsible for the revision and implementation of the plans. **The rules or control strategies submitted to the federal environmental protection agency under the federal clean air act for control of atmospheric ozone shall conform with the federal clean air act unless, based on the recommendation of the natural resources board or the head of the department, as defined in s. 15.01 (8), of any other department, as defined in s. 15.01 (5), that promulgates a rule or establishes a control strategy, the governor determines that measures beyond those required by the federal clean air act meet any of the following criteria:**

(a) The measures are part of an interstate ozone control strategy implementation agreement under s. 285.15 signed by the governor of this state and of the state of Illinois.

(b) The measures are necessary in order to comply with the percentage reductions specified in 42 U.S.C. § 7511a (b) (1) (A) or (c) (2) (B).

(16) Promulgate rules, consistent with but no more restrictive than the federal clean air act, that specify the amounts of emissions that result in a stationary source being classified as a major source and that may limit the classification of a major source to specified categories of stationary sources and to specific air contaminants.

(17) Promulgate rules, consistent with the federal clean air act, that modify the meaning of the term "modification" as it relates to specified categories of stationary sources, to specific air contaminants and to amounts of emissions or increases in emissions.

285.21 Ambient air quality standards and increments.

(1) Ambient air quality standards.

(a) Similar to federal standard. If an ambient air quality standard is promulgated under section 109 of the federal clean air act, the department shall promulgate by rule a similar standard but **this standard may not be more restrictive than the federal standard except as provided under sub. (4).**

(b) Standard to protect health or welfare. **If an ambient air quality standard for any air contaminant is not promulgated under section 109 of the federal clean air act, the department may promulgate an ambient air quality standard if the department finds that the standard is needed to provide adequate protection for public health or welfare. The department may not make this finding for an air contaminant unless the finding is supported with written documentation** that includes all of the following:

1. A public health risk assessment that characterizes the types of stationary sources in this state that are known to emit the air contaminant and the population groups that are potentially at risk from the emissions.

2. An analysis showing that members of population groups are subjected to levels of the air contaminant that are above recognized environmental health standards or will be subjected to those levels if the department fails to promulgate the proposed ambient air quality standard.

3. An evaluation of options for managing the risks caused by the air contaminant considering risks, costs, economic impacts, feasibility, energy, safety, and other relevant factors, and a finding that the proposed ambient air quality standard reduces risks in the most cost-effective manner practicable.

4. A comparison of the proposed ambient air quality standard with ambient air quality standards in Illinois, Indiana, Michigan, Minnesota, and Ohio.

(2) Ambient air increment. The department shall promulgate by rule ambient air increments for various air contaminants in attainment areas. **The ambient air increments shall be consistent with and not more restrictive, either in terms of the concentration or the contaminants to which they apply, than ambient air increments under the federal clean air act except as provided under sub. (4).**

(4) Impact of change in federal standards. If the ambient air increment or the ambient air quality standards in effect on April 30, 1980, under the federal clean air act are modified, the department shall alter the corresponding state standards **unless it finds that the modified standards would not provide adequate protection for public health and welfare. The department may not make this finding for an ambient air quality standard unless the finding is supported with the written documentation** required under sub. (1) (b) 1. to 4.

285.23 Identification of nonattainment areas.

(1) Procedures and criteria. The department shall promulgate by rule procedures and criteria to identify a nonattainment area and to reclassify a nonattainment area as an attainment area. After February 6, 2004, **the department may not identify a county as part of a nonattainment area under the federal clean air act if the concentration of an air contaminant in the atmosphere in that county does not exceed an ambient air quality standard, unless under the federal clean air act the county is required to be designated** as part of a nonattainment area.

285.27 Performance and emission standards.

(1) Standards of performance for new stationary sources.

(a) Similar to federal standard. **If a standard of performance for new stationary sources is promulgated under section 111 of the federal clean air act, the department shall promulgate by rule a similar emission standard,** including administrative requirements that are consistent with the federal administrative requirements, **but this standard may not be more restrictive in terms of emission limitations than the federal standard except as provided under sub. (4).**

(c) Restrictive standard. The department may impose a more restrictive emission standard of performance for a new stationary source than the standard promulgated under par. (a) or (b) on a case-by-case basis if a more restrictive emission standard is needed to

meet the applicable lowest achievable emission rate under s. 285.63 (2) (b) or to install the best available control technology under s. 285.63 (3) (a).¹

(2) Emission standards for hazardous air contaminants.

(a) Similar to federal standard. If an emission standard for a hazardous air contaminant is promulgated under section 112 of the federal clean air act, the department shall promulgate by rule a similar standard, including administrative requirements that are consistent with the federal administrative requirements, but this standard may not be more restrictive in terms of emission limitations than the federal standard except as provided under sub. (4).

(b) Standard to protect public health or welfare. If an emission standard for a hazardous air contaminant is not promulgated under section 112 of the federal clean air act, the department may promulgate an emission standard for the hazardous air contaminant **if the department finds the standard is needed to provide adequate protection for public health or welfare.** The department may not make this finding for a hazardous air contaminant unless the finding is supported with written documentation that includes all of the following:

1. A public health risk assessment that characterizes the types of stationary sources in this state that are known to emit the hazardous air contaminant and the population groups that are potentially at risk from the emissions.
2. An analysis showing that members of population groups are subjected to levels of the hazardous air contaminant that are above recognized environmental health standards or

¹ 285.63 Criteria for permit approval.

(2) Requirements for permits for new or modified major sources in nonattainment areas. The department may approve the application for a construction permit or operation permit for a major source that is a new source or modified source and is located in a nonattainment area if the department finds that the major source meets the requirements under sub. (1) and it finds that all of the following conditions are met:

(b) Lowest achievable emission rate. The emission from the major source will be at the lowest achievable emission rate.

(3) Requirements for permits for new or modified major sources in attainment areas. The department may approve the application for a construction permit or operation permit for a major source that is a new source or a modified source and is located in an attainment area if the department finds that the major source meets the requirements under sub. (1) and it finds:

(a) Best available control technology. The source will be subject to the best available control technology for each applicable air contaminant;

will be subjected to those levels if the department fails to promulgate the proposed emission standard for the hazardous air contaminant.

3. An evaluation of options for managing the risks caused by the hazardous air contaminant considering risks, costs, economic impacts, feasibility, energy, safety, and other relevant factors, and a finding that the chosen compliance alternative reduces risks in the most cost-effective manner practicable.

4. A comparison of the emission standards for hazardous air contaminants in this state to hazardous air contaminant standards in Illinois, Indiana, Michigan, Minnesota, and Ohio.

(c) Restrictive standard. The department may impose a more restrictive emission standard for a hazardous air contaminant than the standard promulgated under par. (a) or (b) on a case-by-case basis if a more restrictive standard is needed to meet the applicable lowest achievable emission rate under s. 285.63 (2) (b) or to install the best available control technology under s. 285.63 (3) (a).

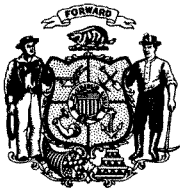
(d) Emissions regulated under federal law. Emissions limitations promulgated under par. (b) and related control requirements do not apply to hazardous air contaminants emitted by emissions units, operations, or activities that are regulated by an emission standard promulgated under section 112 of the federal clean air act, including a hazardous air contaminant that is regulated under section 112 of the federal clean air act by virtue of regulation of another substance as a surrogate for the hazardous air contaminant or by virtue of regulation of a species or category of hazardous air contaminants that includes the hazardous air contaminant.

(3) Limitation on imposition of emission standards. The department may not impose emission standards on a coal-powered car ferry that was manufactured before 1954 and has operated only on Lake Michigan if the coal-powered car ferry does not burn coal with a higher sulfur content than the coal burned before May 2, 1990.

(4) Impact of change in federal standards. If the standards of performance for new stationary sources or the emission standards for hazardous air contaminants under the federal clean air act are relaxed, the department shall alter the corresponding state standards unless it finds that the relaxed standards would not provide adequate protection for public health and welfare. The department may not make this finding for an emission standard for a hazardous air contaminant unless the finding is supported with the written documentation required under sub. (2) (b) 1. to 4. This subsection applies to state standards of performance for new stationary sources and emission standards for hazardous air contaminants in effect on April 30, 1980, if the relaxation in the corresponding federal standards occurs after April 30, 1980.

285.39 Volatile organic compounds growth accommodation and replenishment.

(5) . . . The emission limitations may not be more restrictive than the lowest achievable emission rate.



11/3
State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-3608/P1

RCT.....

mk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

(Note)

GenCat

X+

1 AN ACT ...; relating to: standards relating to air pollution and water pollution.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

X

2 SECTION 1. 283.11 (2) (a) of the statutes is renumbered 283.11 (2) and amended
3 to read:
4 283.11 (2) ~~Except for rules concerning storm water discharges for which~~
5 ~~permits are issued under s. 283.33, all~~ [✓] All rules promulgated by the department
6 under this chapter as they relate to point source discharges, effluent limitations,
7 municipal monitoring requirements, standards of performance for new sources, toxic
8 effluent standards or prohibitions and pretreatment standards shall ~~comply with~~
9 ~~and not exceed~~ be at least as stringent as [✓] the requirements of the federal water
10 pollution control act, 33 USC 1251 to 1387, and regulations adopted under that act.

8
1 SECTION 2. 293.11 (2) (b) of the statutes is repealed. ✓

2 SECTION 3. 283.11 (3) (a) of the statutes is amended to read:

3 283.11 (3) (a) *Standards for nitrogen and disinfection.* Notwithstanding sub-
4 (1) or (2), the The department may promulgate by rule effluent limitations
5 representing the best available demonstrated control technology, processes,
6 operating methods or other alternatives concerning the discharge of nitrogen
7 compounds and concerning the disinfection of sanitary wastewaters if the U.S.
8 environmental protection agency has not promulgated an effluent limitation,
9 effluent standard or prohibition concerning this type of discharge or disinfection.

History: 1973 c. 74; 1979 c. 221 ss. 650c, 650e; 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 27; 1991 a. 39; 1993 a. 16; 1995 a. 227 s. 859; Stats. 1995 s. 283.11.

10 SECTION 4. 283.11 (3) (am) of the statutes is amended to read:

11 283.11 (3) (am) *Standards for phosphorous.* Notwithstanding sub. (1) or (2),
12 the The department shall promulgate by rule effluent limitations representing the
13 best available demonstrated control technology, processes, operating methods or
14 other alternatives concerning the discharge of phosphorous if the U.S.
15 environmental protection agency has not promulgated an effluent limitation,
16 effluent standard or prohibition concerning this type of discharge.

X
History: 1973 c. 74; 1979 c. 221 ss. 650c, 650e; 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 27; 1991 a. 39; 1993 a. 16; 1995 a. 227 s. 859; Stats. 1995 s. 283.11.

17 SECTION 5. 283.11 (3) (d) of the statutes is repealed.

18 SECTION 6. 283.11 (4) (a) (intro.) of the statutes is amended to read: ✓

19 283.11 (4) (a) *Authorization.* (intro.) Notwithstanding sub. (1) or (2), the The
20 department may promulgate by rule, under s. 283.21, a toxic effluent standard or
21 prohibition applicable to a category or class of point sources for the discharge of an
22 identified toxic pollutant, if the U.S. environmental protection agency has not done
23 either of the following for that identified toxic pollutant:

1 **SECTION 7.** 283.11 (4) (e) of the statutes is repealed. ✓

History: 1973 c. 74; 1979 c. 221 ss. 650c, 650e; 1985 a. 29; 1985 a. 182 s. 57; 1987 a. 27; 1991 a. 39; 1993 a. 16; 1995 a. 227 s. 859; Stats. 1995 s. 283.11.

2 **SECTION 8.** 285.11 (6) (intro.) of the statutes is renumbered 285.11 (6) and
3 amended to read:

4 285.11 (6) (intro.) Prepare and develop one or more comprehensive plans for
5 the prevention, abatement and control of air pollution in this state. The department
6 thereafter shall be responsible for the revision and implementation of the plans. The
7 ~~rules or control strategies submitted to the federal environmental protection agency~~
8 ~~under the federal clean air act for control of atmospheric ozone shall conform with~~
9 ~~the federal clean air act unless, based on the recommendation of the natural~~
10 ~~resources board or the head of the department, as defined in s. 15.01 (8), of any other~~
11 ~~department, as defined in s. 15.01 (5), that promulgates a rule or establishes a control~~
12 ~~strategy, the governor determines that measures beyond those required by the~~
13 ~~federal clean air act meet any of the following criteria:~~

History: 1995 a. 227 ss. 455, 989; 1999 a. 9; 2003 a. 118. ✓

14 **SECTION 9.** 285.11 (6) (a) and (b) of the statutes are repealed.

15 **SECTION 10.** 285.11 (16) of the statutes is amended to read:

16 285.11 (16) Promulgate rules, ~~consistent with but no more restrictive than the~~
17 ~~federal clean air act,~~ that specify the amounts of emissions that result in a stationary
18 source being classified as a major source and that may limit the classification of a
19 major source to specified categories of stationary sources and to specific air
20 contaminants.

History: 1995 a. 227 ss. 455, 989; 1999 a. 9; 2003 a. 118. ✓

****NOTE: Section 285.11 (17) also requires consistency with the CAA. Do you want
to amend it? Do you want the amendment to s. 285.11 (16) to only eliminate "but no more
restrictive than"? ✓

21 **SECTION 11.** 285.21 (1) (a) of the statutes is amended to read:

1 285.21 (1) (a) *Similar to federal standard.* If an ambient air quality standard
2 is promulgated under section 109 of the federal clean air act, the department shall
3 promulgate by rule a similar standard ~~but this standard may not be more restrictive~~
4 ~~than the federal standard except as provided under sub. (4).~~ ✓

History: 1995 a. 227 ss. 473, 475, 476, 989; 1997 a. 35; 2003 a. 118.

****NOTE: Is this the treatment that you want for s. 285.21 (1) (a)? ✓ X

5 **SECTION 12.** 285.21 (1) (b) (intro.) of the statutes is renumbered 285.21 (1) (b)
6 and amended to read:

7 285.21 (1) (b) *Standard to protect health or welfare.* (intro.) If an ambient air
8 quality standard for any air contaminant is not promulgated under section 109 of the
9 federal clean air act, the department may promulgate an ambient air quality
10 standard if the department finds that the standard is needed to provide adequate
11 protection for public health or welfare. ~~The department may not make this finding~~
12 ~~for an air contaminant unless the finding is supported with written documentation~~
13 ~~that includes all of the following:~~

History: 1995 a. 227 ss. 473, 475, 476, 989; 1997 a. 35; 2003 a. 118. ✓ X

14 **SECTION 13.** 285.21 (1) (b) 1. to 4. of the statutes are repealed. ✓ X

15 **SECTION 14.** 285.21 (2) of the statutes is amended to read:

16 285.21 (2) AMBIENT AIR INCREMENT. The department shall promulgate by rule
17 ambient air increments for various air contaminants in attainment areas. The
18 ~~ambient air increments shall be consistent with and not more restrictive, either in~~
19 ~~terms of the concentration or the contaminants to which they apply, than ambient~~
20 ~~air increments under the federal clean air act except as provided under sub. (4).~~ ✓

History: 1995 a. 227 ss. 473, 475, 476, 989; 1997 a. 35; 2003 a. 118.

****NOTE: Did you want to eliminate all of the stricken language or leave the
requirement of consistency with the CAA? ✓ X

21 **SECTION 15.** 285.21 (4) of the statutes is repealed. ✓ X

****NOTE: Is this the treatment that you want for s. 285.21 (4)?

✓
1 **SECTION 16.** 285.23 (1) of the statutes is amended to read:

2 285.23 (1) PROCEDURES AND CRITERIA. The department shall promulgate by rule
3 procedures and criteria to identify a nonattainment area and to reclassify a
4 nonattainment area as an attainment area. ~~After February 6, 2004, the department~~
5 ~~may not identify a county as part of a nonattainment area under the federal clean~~
6 ~~air act if the concentration of an air contaminant in the atmosphere in that county~~
7 ~~does not exceed an ambient air quality standard, unless under the federal clean air~~
8 ~~act the county is required to be designated as part of a nonattainment area.~~

✓
History: 1979 c. 221; 1981 c. 314 s. 146; 1985 a. 182 s. 57; 1989 a. 56; 1995 a. 227 s. 463; Stats. 1995 s. 285.23; 2003 a. 118.

9 **SECTION 17.** 285.27 (1) (a) of the statutes is amended to read:

10 285.27 (1) (a) *Similar to federal standard.* If a standard of performance for new
11 stationary sources is promulgated under section 111 of the federal clean air act, the
12 department shall promulgate by rule a similar emission standard, ~~including~~
13 ~~administrative requirements that are consistent with the federal administrative~~
14 ~~requirements, but this standard may not be more restrictive in terms of emission~~
15 ~~limitations than the federal standard except as provided under sub. (4).~~

History: 1995 a. 227 s. 474, 989; 2003 a. 118.

✓
****NOTE: Is this the treatment that you want for s. 285.27 (1) (a)?

✓
16 **SECTION 18.** 285.27 (2) (a) of the statutes is amended to read:

17 285.27 (2) (a) *Similar to federal standard.* If an emission standard for a
18 hazardous air contaminant is promulgated under section 112 of the federal clean air
19 act, the department shall promulgate by rule a similar standard, ~~including~~
20 ~~administrative requirements that are consistent with the federal administrative~~
21 ~~requirements, but this standard may not be more restrictive in terms of emission~~
22 ~~limitations than the federal standard except as provided under sub. (4).~~

History: 1995 a. 227 s. 474, 989; 2003 a. 118.

SECTION 19. 285.27 (2) (b) (intro.) of the statutes is renumbered 285.27 (2) (b) and amended to read:

285.27 (2) (b) *Standard to protect public health or welfare.* (intro.) If an emission standard for a hazardous air contaminant is not promulgated under section 112 of the federal clean air act, the department may promulgate an emission standard for the hazardous air contaminant if the department finds the standard is needed to provide adequate protection for public health or welfare. ~~The department may not make this finding for a hazardous air contaminant unless the finding is supported with written documentation that includes all of the following:~~

History: 1995 a. 227 s. 474, 989; 2003 a. 118.

SECTION 20. 285.27 (2) (b) 1. to 4. of the statutes are repealed.

SECTION 21. 285.27 (4) of the statutes is repealed.

(END)

ONote

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3608/P1dn

RCT:.....

lmk

(date)

✓
Mark Rinehart:

This is a preliminary version of the draft to allow state environmental programs to have stricter standards than those in federal laws. ✓ Please review the draft carefully. ✓ It was not clear to me whether changes were desired in statutes other than those identified in Appendix A of the instructions and it was sometimes unclear to me what specific changes were wanted in the statutes identified in Appendix A. ✓ There are some notes in the draft raising questions about specific statutes treated in the draft. ✓

I have done some computer searches to try to identify other statutes that you might want to change, but those searches were not exhaustive. ✓ Do you want to change s. 285.30 in any way? Section 285.33? ✓ Should the draft repeal s. 285.60 (6)(b)? ✓ Do you want any changes to the groundwater law, for example to s. 160.07 (4), 160.09 (1), or 160.13 (2)? ✓ Do you want to change s. 291.05, 291.25 (6), or 293.93? ✓

✗ Please contact me with any questions and redraft instructions. ✓

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3608/P1dn
RCT:lmk:jf

November 1, 2005

Mark Rinehart:

This is a preliminary version of the draft to allow state environmental programs to have stricter standards than those in federal laws. Please review the draft carefully. It was not clear to me whether changes were desired in statutes other than those identified in Appendix A of the instructions and it was sometimes unclear to me what specific changes were wanted in the statutes identified in Appendix A. There are some notes in the draft raising questions about specific statutes treated in the draft.

I have done some computer searches to try to identify other statutes that you might want to change, but those searches were not exhaustive. Do you want to change s. 285.30 in any way? Section 285.33? Should the draft repeal s. 285.60 (6) (b)? Do you want any changes to the groundwater law, for example to s. 160.07 (4), 160.09 (1), or 160.13 (2)? Do you want to change s. 291.05, 291.25 (6), or 293.93?

Please contact me with any questions and redraft instructions.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

Tradewell, Becky

From: Dawson, Thomas J.
Sent: Monday, November 14, 2005 4:29 PM
To: Tradewell, Becky
Cc: Rinehart, Mark W.
Subject: FW: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards
Attachments: LRB 3608-P1 TD RevDft1.doc

Becky: It's unclear to me whether you got this yet by now, so here goes.

Tom Dawson

From: Dawson, Thomas J.
Sent: Thursday, November 03, 2005 3:58 PM
To: Rinehart, Mark W.
Cc: Bauer, Michael R.
Subject: RE: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards

Mark: Here is my final response on the above draft sent to you by Rebecca Tradewell.

First, attached is the draft containing my proposed revisions.

Please note that I was not able to show these revisions on the pdf draft sent to me, as I would have liked to have been able to do. I had it scanned, made into a Word document so I could make the revisions shown.

Note that my revisions are shown highlighted in yellow. If there are questions, let me know or I can talk to the drafter.

Second, below are my responses to Tradewell's note to you accompanying the draft:

In the November 1, 2005, Rebecca Tradewell note to you accompanying LRB-3608/P1dn, she asks about the following, to which I respond. Please provide Rebecca only the "yes" or "no" answers, without the explanation, which I include here for internal use. The last item will require review by Bauer and the front office.

✓ "Do you want to change . . .

1) . . . s. 285.30 in any way?"

Response: No.

This relates to motor vehicles for which there is federal preemption unless the State opts into California regulation. This would be biting off more than we can chew.

11/15/2005

✓ 2) ... Section 285.33?"

Response: No.

This relates to trip reduction programs. Governor has responsibility with respect to weakening the program. See s. 285.33(5).

✓ 3) "Should the draft repeal s. 285.60(6)(b)?"

Response: Yes.

This provides DNR shall exempt minor air pollution sources if they do not present significant hazards. The law is bad policy because of the difficulty of proving significance of hazards and because it appears to exempt many sources that cumulatively may be causing harm.

✓ 4) "Do you want any changes to the groundwater law, for example to s. 160.07(4), 160.09(1), or 160.13(2)?"

Response: No.

These provisions were part of the original deal on creating this law.

5) "Do you want to change s. 291.05, 291.25(6), or 293.93?"

Response: Probably No—but check with front office.

The first two provisions relate to hazardous waste, while the third relates to metallic mining. The original request was to authorize DNR to adopt standards more stringent than under federal law for protecting air and water, largely in response to the so-called Jobs Creation Act, which rolled back DNR's authority to conform strictly to be no more stringent than federal law. These provisions do not relate directly to air or water, and appear to pre-date the Jobs Creation Act. However, they suffer from the same restriction as the other laws being changed, and it would be good public policy to allow DNR to adopt stricter standards in response to particular situations consistent with the changes being proposed for air and water.

Thanks!

Thomas J. Dawson
Assistant Attorney General
Director - Environmental Protection Unit
Wisconsin Department of Justice
17 West Main Street
Madison, Wisconsin 53707-7857
(608) 266-8987 (Direct)
(608) 266-2250 (Fax)
dawsontj@doj.state.wi.us

From: Rinehart, Mark W.
Sent: Wednesday, November 02, 2005 9:02 AM
To: Dawson, Thomas J.
Subject: FW: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards

What do you think? No huge rush.

From: Barman, Mike
Sent: Tuesday, November 01, 2005 4:41 PM
To: Rinehart, Mark W.
Subject: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards

Following is the PDF version of draft LRB 05-3608/P1 and drafter's note.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT **to repeal** 283.11 (2) (b), 283.11 (3) (d), 283.11 (4) (e), 285.11 (6) (a) and
2 (b), 285.21 (1) (b) 1. to 4., 285.21 (4), 285.27 (2) (b) 1. to 4. and 285.27 (4); **to**
3 **renumber and amend** 283.11 (2) (a), 285.11 (6) (intro.), 285.21 (1) (b) (intro.)
4 and 285.27 (2) (b) (intro.); and **to amend** 283.11 (3) (a), 283.11 (3) (am), 283.11
5 (4) (a) (intro.), 285.11 (16), 285.21 (1) (a), 285.21 (2), 285.23 (1), 285.27 (1) (a)
and
6 285.27 (2) (a) of the statutes; **relating to:** standards relating to air pollution
7 and water pollution.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

8 SECTION 1. 283.11 (2) (a) of the statutes is renumbered 283.11 (2) and amended
9 to read:
10 283.11 (2) ~~Except for rules concerning storm water discharges for which~~
11 ~~permits are issued under s. 283.33, all~~ All rules promulgated by the department

1 under this chapter as they relate to point source discharges, effluent limitations,
2 municipal monitoring requirements, standards of performance for new sources, toxic
3 effluent standards or prohibitions and pretreatment standards shall ~~comply with~~
4 ~~and not exceed~~ be at least as stringent as the requirements of the federal water
5 pollution control act, 33 USC 1251 to 1387, and regulations adopted under that act.

6 **SECTION 2.** 283.11 (2) (b) of the statutes is repealed.

7 **SECTION 3.** 283.11 (3) (a) of the statutes is amended to read:

8 283.11(3) (a) *Standards for nitrogen and disinfection.* ~~Notwithstanding sub-~~
9 ~~(1) or (2),—the~~ The department may promulgate by rule effluent limitations
10 representing the best available demonstrated control technology, processes,
11 operating methods or other alternatives concerning the discharge of nitrogen
12 compounds and concerning the disinfection of sanitary wastewaters ~~if the U.S.~~
13 ~~environmental protection agency has not promulgated an effluent limitation,~~
14 ~~effluent standard or prohibition concerning this type of discharge or disinfection.~~

15 **SECTION 4.** 283.11(3) (am) of the statutes is amended to read:

16 283.11(3) (am) *Standards for phosphorous.* ~~Notwithstanding sub. (1) or (2),~~
17 ~~the~~ The department shall promulgate by rule effluent limitations representing the
18 best available demonstrated control technology, processes, operating methods or
19 other alternatives concerning the discharge of phosphorous ~~if the U.S.~~
20 ~~environmental protection agency has not promulgated an effluent limitation,~~
21 ~~effluent standard or prohibition concerning this type of discharge.~~

22 **SECTION 5.** 283.11 (3) (d) of the statutes is repealed.

23 **SECTION 6.** 283.11(4) (a) (intro.) of the statutes is amended to read:

24 283.11 (4) (a) *Authorization.* (intro.) ~~Notwithstanding sub. (1) or (2),—the~~ The
25 department may promulgate by rule, under s. 283.21, a toxic effluent standard or

1 prohibition applicable to a category or class of point sources for the discharge of an
 2 identified toxic pollutant, if whether or not the U.S. environmental protection agency
 has not done

3 either any of the following for that identified toxic pollutant:

4 **SECTION 7.** 283.11 (4) (e) of the statutes is repealed.

5 **SECTION 8.** 285.11 (6) (intro.) of the statutes is renumbered 285.11 (6) and
 6 amended to read:

7 285.11 (6) Prepare and develop one or more comprehensive plans for the
 8 prevention, abatement and control of air pollution in this state. ~~The department~~ ²
 9 ~~thereafter shall be responsible for the revision and implementation of the plans. The~~
 10 ~~rules or control strategies submitted to the federal environmental protection agency~~
 11 ~~under the federal clean air act for control of atmospheric ozone shall conform with~~
 12 ~~the federal clean air act unless, based on the recommendation of the natural~~
 13 ~~resources board or the head of the department, as defined in s. 15.01 (8), of any other~~
 14 ~~department, as defined in s. 15.01 (5), that promulgates a rule or establishes a control~~
 15 ~~strategy, the governor determines that measures beyond those required by the~~
 16 ~~federal clean air act meet any of the following criteria:~~

17 **SECTION 9.** ~~285.11 (6) (a) and (b) of the statutes are repealed.~~ 285.11(6)(c) is
created to read:

(c) The measures are necessary to protect the health, safety, or welfare of the
citizens of Wisconsin, or the environment.

18 **SECTION 10.** 285.11 (16) of the statutes is amended to read:

19 285.11(16) Promulgate rules, ~~consistent with but no more restrictive than~~ at least
 20 as stringent as required by the
 federal clean air act and regulations promulgated thereunder, that specify the amounts
 of emissions that result in a stationary
 21 source being classified as a major source and that may limit the classification of a
 22 major source to specified categories of stationary sources and to specific air
 23 contaminants.

****NOTE: Section 285.11 (17) also requires consistency with the CAA. Do you want
 to amend it? Do you want the amendment to s. 285.11 (16) to only eliminate "but no more
 restrictive than?"

Response to Note: If "consistent with" means "at least as stringent as required by the clean air act
 and rules promulgated thereunder," then "consistent with" is acceptable in both subs. (16) and (17).

see
 correspondence
 dated
 11/18/05

SECTION 11

1 **SECTION 11.** 285.21 (1) (a) of the statutes is amended to read:
2 285.21(1) (a) *Similar to federal standard.* If an ambient air quality standard
3 is promulgated under section 109 of the federal clean air act, the department shall
4 promulgate by rule a similar standard ~~but this standard may not be more~~ that is no less
restrictive¹
5 than the federal standard ~~except as provided under sub. (4).~~

****NOTE: Is this the treatment that you want for s. 285.21 (1) (a)?
Response to Note: See above revision.

6 **SECTION 12.** 285.21 (1) (b) (intro.) of the statutes is renumbered 285.21 (1) (b)
7 and amended to read:

8 285.21(1) (b) *Standard to protect health or welfare.* If an ambient air quality
9 standard for any air contaminant is not promulgated under section 109 of the federal
10 clean air act, the department may promulgate an ambient air quality standard if the
11 department finds, based on credible information that the standard is needed to provide
adequate protection for
12 public health, ~~or~~ welfare, safety or the environment. ~~The department may not make this~~
~~finding for an air~~
13 ~~contaminant unless the finding is supported with written documentation that~~
14 ~~includes all of the following:~~

15 **SECTION 13.** 285.21 (1) (b) 1. to 4. of the statutes are repealed.

16 **SECTION 14.** 285.21(2) of the statutes is amended to read:
17 285.21 (2) AMBIENT AIR INCREMENT. The department shall promulgate by
rule
18 ambient air increments for various air contaminants in attainment areas. The
19 ambient air increments shall be consistent with and or not more restrictive, either in
20 terms of the concentration or the contaminants to which they apply, than ambient
21 air increments under the federal clean air act except as provided under sub. (4).

****NOTE: Did you want to eliminate all of the stricken language or leave the requirement
of consistency with the CAA?
Response to Note: See proposed revision above.

22 **SECTION 15.** 285.21 (4) of the statutes is repealed.

****NOTE: Is this the treatment that you want for s. 285.21 (4)?
Response to Note: Yes.

¹ The terms "no less stringent" and "no less restrictive" are used even though they mean the same thing. Shouldn't either term, but not both terms, be used?

1 **SECTION 16.** 285.23 (1) of the statutes is amended to read:
2 285.23 (1) PROCEDURES AND CRITERIA. The department shall promulgate
3 by rule
4 procedures and criteria to identify a nonattainment area and to reclassify a
5 nonattainment area as an attainment area. After February 6, 2004, the department
6 may not identify a county as part of a nonattainment area under the federal clean
7 air act if the concentration of an air contaminant in the atmosphere in that county
8 does not exceed an ambient air quality standard, unless under the federal clean air
act the county is required to be designated as part of a nonattainment area.

9 **SECTION 17.** 285.27 (1) (a) of the statutes is amended to read:
10 285.27 (1) (a) *Similar to federal standard.* If a standard of performance for new
11 stationary sources is promulgated under section 111 of the federal clean air act, the
12 department shall promulgate by rule a similar emission standard, including
13 administrative requirements, that are consistent with the federal administrative
14 requirements but this standard may not be as or more restrictive in terms of emission
15 limitations than the federal standard except as provided under sub. (4).

***NOTE. Is this the treatment that you want for s. 285.27 (1) (a)?
Response to note: See above revision.

16 **SECTION 18.** 285.27 (2) (a) of the statutes is amended to read:
17 285.27 (2) (a) *Similar to federal standard.* If an emission standard for a
18 hazardous air contaminant is promulgated under section 112 of the federal clean air
19 act, the department shall promulgate by rule a similar standard, including
20 administrative requirements that are consistent with the federal administrative
21 requirements, but this standard may not be as or more restrictive in terms of emission
22 limitations than the federal standard except as provided under sub. (4).

23 **SECTION 19.** 285.27 (2) (b) (intro.) of the statutes is renumbered 285.27 (2) (b)
24 and amended to read:

285.27 (2) (b) *Standard to protect public health or welfare.* If an emission standard for a hazardous air contaminant is not promulgated under section 112 of the federal clean air act, the department may promulgate an emission standard for the hazardous air contaminant if the department finds the standard is needed to provide adequate protection for public health, safety, or welfare, or the environment. ~~The department may not make this finding for a hazardous air contaminant unless the finding is supported with written documentation that includes all of the following:~~

8 **SECTION 20.285.27 (2) (b) 1. to 4. of the statutes are repealed.**

9 **SECTION 21.285.27 (4)** of the statutes is repealed.

10 (END)

Tradewell, Becky

To: Dawson, Thomas J.

Subject: RE: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards

Tom,

Thank you for sending me your comments.

On your proposed changes to the treatment of s. 283.11 (3) (a) and (am) and (4) (a) (intro.): Section 283.11 (1) requires DNR to promulgate effluent limitations if EPA does. The provisions in subs. (3) and (4) were created, I believe, to give DNR authority to act on substances with respect to which EPA had not acted. Because of s. 283.11 (1), it seems unnecessary (and confusing, I think) to broaden those provisions to apply when EPA **has** acted with respect to a substance. Section 283.11 (4) (d), for example, seems to impose requirements that would not apply to DNR's rule promulgation if EPA has acted with respect to a substance. I would suggest not making the proposed changes. (Please let me know if I have not been clear about my concern.)

About s. 285.11 (6): I gather that you do not wish to repeal s. 285.11 (6) (a) and (b), which establish criteria for imposing ozone control measures beyond those required by the Clean Air Act, but instead want to add an additional criterion. To do that, at least some of the stricken language from s. 285.11 (6) (intro.) [which is amended in section 8 of the draft] must be restored. Should all of the stricken language be restored?

With regard to the use of "stringent" and "restrictive," chapter 283 seems to use "stringent" only. Chapter 285 uses both words, but uses "restrictive" more often. For this draft, I would be inclined to use "stringent" in chapter 283 and "restrictive" in chapter 285.

Please let me know if you want to discuss any issues related to this draft.

Becky Tradewell
6-7290

From: Dawson, Thomas J.

Sent: Monday, November 14, 2005 4:29 PM

To: Tradewell, Becky

Cc: Rinehart, Mark W.

Subject: FW: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards

Becky: It's unclear to me whether you got this yet by now, so here goes.

Tom Dawson

From: Dawson, Thomas J.

Sent: Thursday, November 03, 2005 3:58 PM

To: Rinehart, Mark W.

Cc: Bauer, Michael R.

Subject: RE: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards

Mark: Here is my final response on the above draft sent to you by Rebecca Tradewell.

11/18/2005

First, attached is the draft containing my proposed revisions.

Please note that I was not able to show these revisions on the pdf draft sent to me, as I would have liked to have been able to do. I had it scanned, made into a Word document so I could make the revisions shown.

Note that my revisions are shown highlighted in yellow. If there are questions, let me know or I can talk to the drafter.

Second, below are my responses to Tradewell's note to you accompanying the draft:

In the November 1, 2005, Rebecca Tradewell note to you accompanying LRB-3608/P1dn, she asks about the following, to which I respond. Please provide Rebecca only the "yes" or "no" answers, without the explanation, which I include here for internal use. The last item will require review by Bauer and the front office.

"Do you want to change . . .

1) . . . s. 285.30 in any way?"

Response: No.

This relates to motor vehicles for which there is federal preemption unless the State opts into California regulation. This would be biting off more than we can chew.

2) . . . Section 285.33?"

Response: No.

This relates to trip reduction programs. Governor has responsibility with respect to weakening the program. See s. 285.33(5).

3) "Should the draft repeal s. 285.60(6)(b)?"

Response: Yes.

This provides DNR shall exempt minor air pollution sources if they do not present significant hazards. The law is bad policy because of the difficulty of proving significance of hazards and because it appears to exempt many sources that cumulatively may be causing harm.

4) "Do you want any changes to the groundwater law, for example to s. 160.07(4), 160.09(1), or 160.13(2)?"

Response: No.

These provisions were part of the original deal on creating this law.

5) "Do you want to change s. 291.05, 291.25(6), or 293.93?"

Response: Probably No—but check with front office.

The first two provisions relate to hazardous waste, while the third relates to metallic mining. The original request was to authorize DNR to adopt standards more stringent than under federal law for protecting air and water, largely in response to the so-called Jobs Creation Act, which rolled back DNR's authority to conform strictly to be no more stringent than federal law. These provisions do not relate directly to air or water, and appear to pre-date the Jobs Creation Act. However, they suffer from the same restriction as the other laws being changed, and it would be good public policy to allow DNR to adopt stricter standards in response to particular situations consistent with the changes being proposed for air and water.

Thanks!

Thomas J. Dawson
 Assistant Attorney General
 Director - Environmental Protection Unit
 Wisconsin Department of Justice
 17 West Main Street
 Madison, Wisconsin 53707-7857
 (608) 266-8987 (Direct)
 (608) 266-2250 (Fax)
dawsontj@doj.state.wi.us

From: Rinehart, Mark W.
Sent: Wednesday, November 02, 2005 9:02 AM
To: Dawson, Thomas J.
Subject: FW: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards

What do you think? No huge rush.

From: Barman, Mike
Sent: Tuesday, November 01, 2005 4:41 PM
To: Rinehart, Mark W.
Subject: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards

Following is the PDF version of draft LRB 05-3608/P1 and drafter's note.

Tradewell, Becky

From: Dawson, Thomas J.
Sent: Friday, November 18, 2005 4:41 PM
To: Tradewell, Becky
Cc: Rinehart, Mark W.
Subject: RE: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards
Attachments: 11-18-05 TD revision of SECTION 8.doc

Becky:

See my responses below in context of your message.

Thomas J. Dawson
 Assistant Attorney General
 Director - Environmental Protection Unit
 Wisconsin Department of Justice
 17 West Main Street
 Madison, Wisconsin 53707-7857
 (608) 266-8987 (Direct)
 (608) 266-2250 (Fax)
dawsontj@doj.state.wi.us

From: Tradewell, Becky
Sent: Friday, November 18, 2005 4:06 PM
To: Dawson, Thomas J.
Subject: RE: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards

Tom,

Thank you for sending me your comments.

✓ On your proposed changes to the treatment of s. 283.11 (3) (a) and (am) and (4) (a) (intro.): Section 283.11 (1) requires DNR to promulgate effluent limitations if EPA does. The provisions in subs. (3) and (4) were created, I believe, to give DNR authority to act on substances with respect to which EPA had not acted. Because of s. 283.11 (1), it seems unnecessary (and confusing, I think) to broaden those provisions to apply when EPA **has** acted with respect to a substance. Section 283.11 (4) (d), for example, seems to impose requirements that would not apply to DNR's rule promulgation if EPA has acted with respect to a substance. I would suggest not making the proposed changes. (Please let me know if I have not been clear about my concern.) [Tom Dawson] I agree. Sorry for the confusion.

About s. 285.11 (6): I gather that you do not wish to repeal s. 285.11 (6) (a) and (b), which establish criteria for imposing ozone control measures beyond those required by the Clean Air Act, but instead want to add an additional criterion. To do that, at least some of the stricken language from s. 285.11 (6) (intro.) [which is amended in section 8 of the draft] must be restored. [Tom Dawson] Agreed, although I'll anticipate what you come up with. Should all of the stricken language be restored? [Tom Dawson] I don't think

11/21/2005

"all". Please take a look at the attached and let me know what you think.

With regard to the use of "stringent" and "restrictive," chapter 283 seems to use "stringent" only. Chapter 285 uses both words, but uses "restrictive" more often. For this draft, I would be inclined to use "stringent" in chapter 283 and "restrictive" in chapter 285.[Tom Dawson] That's fine. I just found it to be a drafting technicality.

Please let me know if you want to discuss any issues related to this draft.

Becky Tradewell
6-7290

[Tom Dawson] Thanks, Becky. I look forward to your next draft. Have a good weekend.

From: Dawson, Thomas J.
Sent: Monday, November 14, 2005 4:29 PM
To: Tradewell, Becky
Cc: Rinehart, Mark W.
Subject: FW: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards

Becky: It's unclear to me whether you got this yet by now, so here goes.

Tom Dawson

From: Dawson, Thomas J.
Sent: Thursday, November 03, 2005 3:58 PM
To: Rinehart, Mark W.
Cc: Bauer, Michael R.
Subject: RE: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards

Mark: Here is my final response on the above draft sent to you by Rebecca Tradewell.

First, attached is the draft containing my proposed revisions.

Please note that I was not able to show these revisions on the pdf draft sent to me, as I would have liked to have been able to do. I had it scanned, made into a Word document so I could make the revisions shown.

Note that my revisions are shown highlighted in yellow. If there are questions, let me know or I can talk to the drafter.

Second, below are my responses to Tradewell's note to you accompanying the draft:

In the November 1, 2005, Rebecca Tradewell note to you accompanying LRB-3608/P1dn, she asks about the following, to which I respond. Please provide Rebecca only the "yes" or "no" answers, without the explanation, which I include here for internal use. The last item will require review by Bauer and the front office.

11/21/2005

"Do you want to change . . .

1) . . . s. 285.30 in any way?"

Response: No.

This relates to motor vehicles for which there is federal preemption unless the State opts into California regulation. This would be biting off more than we can chew.

2) . . . Section 285.33?"

Response: No.

This relates to trip reduction programs. Governor has responsibility with respect to weakening the program. See s. 285.33(5).

3) "Should the draft repeal s. 285.60(6)(b)?"

Response: Yes.

This provides DNR shall exempt minor air pollution sources if they do not present significant hazards. The law is bad policy because of the difficulty of proving significance of hazards and because it appears to exempt many sources that cumulatively may be causing harm.

4) "Do you want any changes to the groundwater law, for example to s. 160.07(4), 160.09(1), or 160.13(2)?"

Response: No.

These provisions were part of the original deal on creating this law.

5) "Do you want to change s. 291.05, 291.25(6), or 293.93?"

Response: Probably No—but check with front office.

The first two provisions relate to hazardous waste, while the third relates to metallic mining. The original request was to authorize DNR to adopt standards more stringent than under federal law for protecting air and water, largely in response to the so-called Jobs Creation Act, which rolled back DNR's authority to conform strictly to be no more stringent than federal law. These provisions do not relate directly to air or water, and appear to pre-date the Jobs Creation Act. However, they suffer from the same restriction as the other laws being changed, and it would be good public policy to allow DNR to adopt stricter standards in response to particular situations consistent with the changes being proposed for air and water.

Thanks!

Thomas J. Dawson
Assistant Attorney General

11/21/2005

Director - Environmental Protection Unit
Wisconsin Department of Justice
17 West Main Street
Madison, Wisconsin 53707-7857
(608) 266-8987 (Direct)
(608) 266-2250 (Fax)
dawsontj@doj.state.wi.us

From: Rinehart, Mark W.
Sent: Wednesday, November 02, 2005 9:02 AM
To: Dawson, Thomas J.
Subject: FW: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards

What do you think? No huge rush.

From: Barman, Mike
Sent: Tuesday, November 01, 2005 4:41 PM
To: Rinehart, Mark W.
Subject: Draft review: LRB 05-3608/P1 Topic: Allow environmental standards to be stricter than federal standards

Following is the PDF version of draft LRB 05-3608/P1 and drafter's note.

SECTION 8. 285.11 (6) (intro.) of the statutes is renumbered 285.11 (6) and

6 amended to read:

7 285.11 (6) Prepare and develop one or more comprehensive plans for the
8 prevention, abatement and control of air pollution in this state. The department
9 thereafter shall be responsible for the revision and implementation of the plans.

The

10 rules or control strategies submitted to the federal environmental protection
agency

11 under the federal clean air act for control of atmospheric ozone may be more
stringent than shall conform with

12 the federal clean air act ~~unless, based on the recommendation of the natural~~
13 ~~resources board or the head of the department, as defined in s. 15.01 (8), of any~~
other

14 department, as defined in s. 15.01 (5), ~~that promulgates a rule or establishes a~~
control

15 strategy, the governor determines that measures beyond those required by the
16 federal clean air act meet any of the following criteria:

17 **SECTION 9.** 285.11 (6) (a) and (b) of the statutes are repealed.

285.11(6)(c) is created to read:

(c) The measures are necessary to protect the health, safety, or welfare of
the citizens of Wisconsin, or the environment.